

PROPRIETARY INFORMATION REDACTED

-- This page is intentionally left blank --

PROPRIETARY INFORMATION REDACTED

-- This page is intentionally left blank --

## **F. ACSI's Formal Complaint Against BellSouth**

On January 6, 1997, ACSI filed a formal complaint before this Commission regarding the events described above. ACSI contends that BellSouth violated Section 251 of the Communications Act, and the Interconnection Agreement by its failure to provision unbundled loops timely and without disruption. ACSI requested that BellSouth be ordered to comply immediately with the Agreement, and requested an award of monetary damages, attorneys' fees, and other costs.

ACSI also filed an action under state and federal law stating similar causes of action before the Georgia PSC on December 23, 1996. The Georgia PSC has jurisdiction to hear the claims ACSI raised in that complaint. The Georgia PSC complaint does not request an award for damages, and is limited in terms of remedies to the State of Georgia. Other than the Georgia PSC action, no other suits have been filed before any other governmental agency or court stating the same or similar causes of action.

## **II. STATEMENT OF RELEVANT LAW**

### **A. Legal Standard**

A principal objective of the 1996 Act was to open the local exchange and exchange access markets to competition. See *Interconnection Order*<sup>10</sup> ¶ 6. Section 251(c)(3) of the 1996 Act implements that goal by requiring incumbent LECs to provide requesting carriers

---

<sup>10</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Interconnection Order*), Order on Reconsideration, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) (*Reconsideration Order*), petition for review pending and partial stay granted, sub nom. *Iowa Utilities Board et al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Oct. 15, 1996), partial stay lifted in part, *Iowa Utilities Board et al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Nov. 1, 1996).

"nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable and nondiscriminatory." 47 U.S.C. § 251(c)(3). In addition, Section 251(c)(2) of the 1996 Act requires incumbent LECs to provide interconnection to their networks that "is at least equal in quality to that provided by the local exchange carrier to itself" and on "rates, terms and conditions that are just, reasonable and nondiscriminatory". 47 U.S.C. § 251(c)(2). Section 201(b) of the Act requires that the practices of common carriers be "just and reasonable". 47 U.S.C. § 201(b).

Moreover, Section 51.313(b) of the Commission's rules requires that "the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, *including . . . the time within which the incumbent LEC provisions such access to unbundled network elements*, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself." 47 C.F.R. § 51.319(b) (emphasis added). In addition, incumbent LECs must provide other carriers with access to the pre-ordering, ordering, provisioning, maintenance and repair operations support systems as required to facilitate provisioning of network elements at parity. *Id.* § 51.313(c). Notably, the "local loop" is specifically identified in the Commission's rules as a network element which must be unbundled and made available in accordance with the foregoing standards. *Id.* § 51.319(a); *see generally*, *Interconnection Order* ¶¶ 367-96.

#### **B. Jurisdiction**

Section 208 grants the FCC jurisdiction over complaints concerning "anything done or omitted to be done by a common carrier . . . in contravention of the provisions of [the Act]." 47 U.S.C. § 208. This jurisdiction clearly includes (as BellSouth admits, Answer

¶ 23) actions that violate an incumbent LEC's duties under Section 251(c). Indeed, the Commission already has concluded that it has jurisdiction to hear complaints concerning the types of activities alleged by ACSI. *Interconnection Order* ¶ 127 (allegations that a carrier is violating the terms of a negotiated agreement), 143 (bad faith negotiations).

### **III. BELLSOUTH FAILED TO FULFILL ACSI'S LOOP ORDERS IN ACCORDANCE WITH THE ACT AND THE INTERCONNECTION AGREEMENT**

#### **A. BellSouth Was Completely Unprepared to Meet its Obligations Under the Agreement and Made No Attempt to Coordinate a Seamless Cutover for ACSI Local Service Customers**

The Act and the Commission's rules require BellSouth to provision unbundled loops to ACSI at parity with its own local service provisioning. 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.313(b). In addition, BellSouth is obligated by the Act (and contract law) to fulfill the terms and conditions it agreed to in the parties' Interconnection Agreement. The Interconnection Agreement's standards for loop cutovers are clear. BellSouth will install orders for unbundled network elements (including unbundled loops) in a timeframe equivalent to that which applies when BellSouth provides local services to its own customers. Section IV.D.1. If SPNP also is ordered as part of an unbundled loop installation, BellSouth will coordinate the installation of SPNP to coincide with the loop installation. Section IV.D.8. In addition, the actual process of the cutover is intended to be seamless to the customer. The parties will agree on a 30-minute window during which the cutover will start, and the standard time expected for affected customers to be out-of-service during a cutover is 5 minutes. Sections IV.D.3, IV.D.6.

When the time came for BellSouth to deliver on these promises, it utterly failed to do so. ACSI was forced to bear the brunt of

Due largely to BellSouth's admitted failure to coordinate customers with ACSI (Answer ¶ 11), Corporate Center was put out of service for over 24 hours. Jefferson Pilot was disconnected for approximately 4-5 hours. Mutual Life was left without service for 6-7 hours. *Supra* pp. 13-15. Indeed, of the three orders BellSouth attempted to provision on November 27, 1996, the *shortest* time period in which it accomplished a loop cutover was 4-5 hours – over 48 times longer than the 5-minute interval required by the Agreement. Similar lengthy service outages resulted from failed BellSouth attempts to provision unbundled loops to three additional customer a week later: Joseph Wiley, Jr.; Cullen & Associates; and, Carrie G. Chandler. *Supra* pp. 15-16. In retrospect, this is not surprising since,

Even when BellSouth finally installed unbundled loops for ACSI's initial customers, it frequently failed to coordinate ACSI's request for SPNP to coincide with the loop cutover. As a result, when Jefferson Pilot and Mutual Life finally had their access to local service for outbound calling restored, they still could not receive incoming calls from the public. Instead, persons calling the ACSI customers' old (BellSouth) telephone numbers received a message stating that the line had been disconnected. *Supra* pp. 13-15.

In still other instances, unbundled loops were installed with seeming success, only to have service suddenly disconnected without warning. During February 1997, all five locations of Country's Barbecue were disconnected for approximately two hours. Jefferson Pilot and Columbus Tire experienced similar service outages. *Supra* pp. 17-18. ACSI believes that these instances are the inevitable outgrowth of BellSouth's

Unfortunately for ACSI, the company fell victim to a shocking failure by BellSouth to prepare to honor its legal obligation to provide unbundled loops to competitors. Despite the fact that the 1996 Act was signed into law on February 8, 1996; that the Interconnection Agreement was signed on July 25, 1996; and that numerous implementation discussions between the parties were held between August and October, 1996; when ACSI actually submitted its first loop orders in November 1996, BellSouth had no systems in place to ensure timely, error-free installations. Indeed,

Documents obtained during discovery now make clear that

In short,  
BellSouth did not take its order processing obligations seriously, and did not dedicate the resources required to do the job right.

This is not a case where BellSouth was unaware of the magnitude of its obligations. From the outset

It simply was unable or unwilling to devote the resources necessary to achieve these goals,

Judged by BellSouth's own definition of success, BellSouth failed miserably.

**B. ACSI is Not at Fault for BellSouth's Failures**

BellSouth seeks to divert attention from its own failures by blaming ACSI for actions which BellSouth alleges contributed directly and foreseeably to the service disruptions. Specifically, BellSouth claims that ACSI's orders were unclear and frequently supplemented, that ACSI refused to engage in joint testing of ordering procedures, and that BellSouth had to correct an alleged "stenciling" problem on ACSI's collocation equipment. Despite BellSouth's attempted blame-shifting, ACSI is not the cause of BellSouth's inability to provision unbundled loops and meet its obligations under the Act and the Interconnection Agreement. As described above, the facts show that BellSouth negligently or willfully failed



to take the steps necessary to provision unbundled loops promptly and accurately. ACSI's actions had no material effect on BellSouth's fulfillment of ACSI's loop orders.

First, there is no merit to the suggestion that the disruptions occurred because ACSI did not follow BellSouth ordering procedures or repeatedly supplemented its orders. BellSouth never clearly defined the required ordering processes and frequently changed required forms or modified its requirements without giving notice to ACSI. Renner Dec. ¶ 16. In fact, critically, BellSouth initially did not have automated procedures, for all of ordering functions, and orders were submitted by facsimile, with a single customer order often requiring as many as five separate forms. *Id.* This lack of electronic interfaces, and the limited functionality of such interfaces once the BD-Telis system became available, was a primary contributing factor to the ordering problems. With such complicated and constantly evolving ordering procedures, some supplementation was inevitable.<sup>11</sup>

Moreover, many of the alleged ACSI problems likely are reflections of BellSouth's own inconsistency in processing orders submitted to it.

---

<sup>11</sup> BellSouth's claim that ACSI did not give 48 hours notice also is unavailing. In fact, ACSI submitted orders with a requested due date and BellSouth responded with a Firm Order Confirmation ("FOC") specifying in writing the date *and time* in which the cutover would take place. The FOC satisfies the Interconnection Agreement's requirement that the parties agree on a cutover time, and no further communications were necessary to establish a start time. See Direct Testimony of Nancy L. Murrah (Ga. PSC Docket No. 7212-U), attached as App. 16.

Thus, the fact that ACSI supplemented some orders is just as likely to be the result of BellSouth's own inconsistencies as any alleged error by ACSI.

Second, BellSouth has not demonstrated that joint testing of its order processing procedures would have had any material effect on its ability to provision unbundled loops correctly. BellSouth has had several months of actual practice with ACSI, and it still has not demonstrated it can process more than a handful of unbundled loop orders at a time. Even for unbundled loops provisioned as recently as late April, BellSouth still is routinely cutting customers over in unreasonably long intervals. See Stipe Rebuttal Testimony, App. 3. BellSouth's actual practice gives no reason to believe that a period of joint testing would have had any appreciable impact on the ACSI orders.

Finally, the alleged stenciling problem with ACSI's collocation equipment is a red herring. Although BellSouth claims that it discovered an error in the labels (stencils) on ACSI's collocated frame termination equipment,<sup>12</sup> there is no evidence that this alleged error caused any actual delay in BellSouth's fulfillment of ACSI's initial loop orders.

---

<sup>12</sup> BellSouth claims the equipment had termination points labelled "Cable" and "Pair" rather than "TOTIE."

Moreover, the alleged stenciling error is wholly unrelated to BellSouth's failure to provision SPNP coincident with the unbundled loop, and therefore provides no explanation of those failures. It also provides us explanation for BellSouth's continuing failure to meet its contracted cutover obligations months after this unrelated problem was corrected.

**C. BellSouth was Obligated to Fulfill ACSI's Orders**

BellSouth claims as an affirmative defense that the parties had not agreed to an implementation schedule before ACSI began submitting orders. This claim is factually false, and in any event has been waived by BellSouth's actions in response to ACSI's orders.

Immediately after completing the Interconnection Agreement, ACSI worked in close cooperation with BellSouth to prepare for operations under the Agreement.<sup>13</sup> ACSI worked with each of the BellSouth employees that had been designated as substantive contacts on implementation issues in order to address all necessary issues, including, network trunking, loop provisioning and SPNP processes, settlement and billing, and operator services, directory assistance and 911 coordination. *Supra*, pp. 8-11. In addition, in August 1996, ACSI and BellSouth engaged in a two-day face-to-face conference at ACSI headquarters to address call processing, traffic exchange and billing processes.<sup>14</sup> *Id.* This meeting was followed up with a conference call one week later to focus specifically on BellSouth LCSC processes for ordering and provisioning interim number portability and unbundled local loops. *Id.*

---

<sup>13</sup> Indeed, in some cases these discussions began prior to completion of the formal agreement. *See* p. 8, *supra*.

Moreover, ACSI gave BellSouth a specific schedule identifying the order of its planned rollout in BellSouth territory. ACSI and BellSouth agreed that implementation would proceed initially in Columbus, Georgia, followed closely by Montgomery, Alabama and Louisville, Kentucky.<sup>15</sup> *Supra*, pp. 10-11. This schedule was continually revised as events dictated, but always with the intention that implementation would proceed as quickly as possible. *Id.*

This course of dealing satisfies Section XVIII of the Interconnection Agreement. The parties "adopt[ed] a schedule for the implementation of this Agreement" which called for implementation first in Columbus, Georgia, and then in two other cities. Implementation was scheduled to begin as soon as possible, and the schedule was constantly revised as they moved closer to actual implementation. In fact, not only did BellSouth agree to an implementation schedule for Columbus, Georgia, but BellSouth had actual notice of ACSI's imminent orders at least     days prior to attempting to fulfill ACSI's initial loop orders and  
*Supra*, p. 12. The parties clearly agreed on when the Agreement would be implemented; BellSouth simply failed to live up to its end of the commitment.

BellSouth's claim at best amounts to a complaint that the parties had not reduced their schedule to a formal document and attached it as an addendum to the Interconnection Agreement. But BellSouth waived any right it may have had to stand on this formality when it accepted without protest ACSI's orders and attempted -- albeit unsuccessfully -- to fulfill them. BellSouth's own witnesses confirm that its customary practice upon receipt of orders

---

<sup>15</sup> Ultimately, ACSI initiated service in Columbus, Georgia in November 1996, in Montgomery in February 1997 and in Louisville in April 1997. *Remmer Dec.* ¶¶ 7-8.

is to re-negotiate a requested due date if it is determined that the order cannot be fulfilled in the requested period. Testimony of Alphonso Varner, on behalf of BellSouth Telecommunications, Inc., p. 92, lines 17-20 (Ga. PSC Docket 6863-U, filed Feb. 24, 1997). Yet BellSouth did *not* do that here when ACSI began submitting its unbundled loop orders in November 1996. BellSouth Response to ACSI Interrogatory No. 16, App. 6. In fact, despite a continuing flow of unbundled loop orders from ACSI, BellSouth has to date not requested any further formalization of the implementation schedule developed between the companies. BellSouth could have -- and should have -- rejected ACSI's November orders or negotiated a much later due date if it believed that a written implementation schedule was a prerequisite to ACSI's submission of orders. Indeed, BellSouth had notice at least as early as \_\_\_\_\_ days before it attempted to provision unbundled loops to ACSI -- that live orders were imminent. It could have asked ACSI for a formal, written schedule at anytime after \_\_\_\_\_ if it believed such a step was necessary. Instead, it chose to \_\_\_\_\_ By its failure to request an addendum after receiving notice ACSI would be submitting orders and by its acceptance (and attempted installation) of ACSI's orders, BellSouth implicitly agreed that no formal addendum was required. It therefore has waived by its actions any right to object on the ground that a formal document had not been prepared.

#### **IV. BELLSOUTH'S FAILURES VIOLATE SECTION 251 OF THE COMMUNICATIONS ACT, AS AMENDED**

##### **A. BellSouth has Failed to Provide ACSI with Unbundled Loops Consistent with Section 251(c)(3) of the Act**

Section 251(c)(3) requires BellSouth to provide ACSI nondiscriminatory access to unbundled network elements on rates, terms and conditions that are just, reasonable and nondiscriminatory. 47 U.S.C. § 251(c)(3). The provisioning of unbundled loops as network elements is required by the Commission's rules and by the parties' Interconnection Agreement. *See* 47 C.F.R. § 51.319(a); Interconnection Agreement, Section IV. Moreover, BellSouth is obligated to provision unbundled loops in a timeframe that is at a minimum no less favorable than BellSouth provides such elements to itself. 47 C.F.R. § 51.313(b). It also is obligated by the Interconnection Agreement to provision unbundled loops within a 5 minute time interval and to coordinate such cutovers with ACSI in order to minimize any customer disruption. Section IV.D.

As shown above, BellSouth has refused or failed to provide access to unbundled loops in accordance with these standards. Accordingly, BellSouth's actions are in violation of Section 251(c)(3) of the Act.

##### **B. BellSouth has Failed to Provide Interconnection to ACSI Equal to that it Provides to Itself**

Sections 251(c)(2) and (c)(3) require BellSouth to provide interconnection for the transmission and routing of telephone exchange traffic and to provide access to unbundled elements of its network. Access to an unbundled element necessarily requires an interconnection arrangement between the carriers in order to obtain access to the element. *Interconnection Order* ¶ 269. For that reason, the Commission concluded that, independent of an incumbent LEC's obligation under Section 251(c)(2), it must make interconnection

available for the purpose of accessing unbundled elements. *Id.* In other words, interconnection arrangements required under Section 251(c)(3) are broader than interconnection under Section 251(c)(2). *See, id.* ¶ 270 ("If we were to conclude that "access" to unbundled elements under subsection(c)(3) could only be achieved by means of interconnection under subsection (c)(2), we would be limiting, in effect, the uses to which unbundled elements may be put"). For example, an incumbent LEC must offer interconnection under Section 251(c)(3) suitable to allow a CLEC to access its LIDB database or to access signalling transfer points (STPs), even though such arrangements arguably are not the type of interconnection required under Section 251(c)(2).

In the present case, the interconnection ACSI needs to access BellSouth's unbundled loops also is a form of interconnection required under Section 251(c)(2). Interconnection of ACSI's switches and other equipment to BellSouth's unbundled loops is necessary in order to transmit and route local exchange traffic, among other things. BellSouth has refused or failed to permit ACSI to interconnect its equipment for such purposes on terms and conditions that are just and reasonable and in accordance with the Interconnection Agreement. By unreasonably delaying the provisioning of unbundled loops and failing to install SPNP, BellSouth has denied ACSI the ability to interconnect its equipment to BellSouth's network and has denied it the ability to transmit and route local exchange and exchange access traffic over those facilities. This refusal or failure is in violation of Section 251(c)(2) of the Act.

**C. BellSouth has Failed to Provide Interconnection in Accordance with the Interconnection Agreement**

Section 251(c)(2) requires that interconnection be provided "in accordance with the terms and conditions of [an interconnection] agreement." 47 U.S.C. § 251(c)(2)(D). The parties' Interconnection Agreement sets forth the terms and conditions upon which BellSouth will permit ACSI to interconnect to BellSouth's unbundled loop facilities. As shown above, BellSouth refused or failed to provide such access in accordance with the Agreement. Therefore, BellSouth's actions violate Section 251(c)(2) of the Act.

**D. BellSouth's Failure to Prepare to Provision Loop Orders on a Timely Basis Was Unjust and Unreasonable**

Section 201(b) requires that the practices of all common carriers be "just and reasonable." 47 U.S.C. § 201(b). There is overwhelming evidence that over a year after the 1996 Act became law, and more than seven months after the Interconnection Agreement was executed, BellSouth still had not dedicated resources to its LCSCs sufficient to ensure reasonably timely and accurate loop order processing. ACSI signed the Interconnection Agreement, and established its switched services business, in reliance upon the commitments made by BellSouth that it would provision loop orders in accordance with the contract terms and FCC regulations. BellSouth's practice in failing to prepare as required to actually install unbundled loops was not just and reasonable.

**V. BELLSOUTH VIOLATED ITS OBLIGATION TO NEGOTIATE AND DEAL WITH ACSI IN "GOOD FAITH"**

ACSI's Interconnection Agreement was one of the first such agreements BellSouth reached under the framework of the 1996 Act. It sets forth explicit standards that BellSouth



will meet for the provisioning and service quality of unbundled loops. The commitments are objective and well-defined:

**With respect to order processing:**

- Order processing will be "mechanized" and "substantially similar" to special access procedures (Section IV.C.2).
- "Automated interfaces" will be provided to allow ACSI to determine service availability on loops, confirm order acceptance, and determine ongoing order status (Section IV.C.2).

**With respect to loop provisioning:**

- Installation intervals will be equivalent to that which BellSouth provides to its own customers (Section IV.D.1).
- BellSouth will coordinate with ACSI to establish a 30-minute cutover window for the work to begin, work will be performed within a standard time frame expected to be 5 minutes, and BellSouth will waive installation charges if the work takes longer than 15 minutes (Sections IV.D.2-3, 6).
- If ACSI also orders SPNP as part of the loop installation, "BellSouth will coordinate the implementation of SPNP with the loop installation" (Section IV.D.8).

**With respect to service quality:**

- BellSouth will provision network elements with the same installation and service intervals as when BellSouth provisions such network elements for use by itself, its affiliates or its retail subscribers (Section IV.E.3).

These provisions are factual in nature. Section IV.D.3's recitation of 5 minutes as a standard cutover time (with BellSouth waiving installation charges if the cutover takes longer

than 15 minutes) necessarily implies that cutovers can be accomplished in this short time period. The requirement that order processing be "mechanized" with "automated interfaces" presumes that such systems can and will be deployed. Moreover, the explicit comparison to special access order processing implies that the level of quality and dependability will be equivalent for loops as it is for special access. As a result, ACSI took BellSouth's commitment to these standards as an implicit representation that it has the capability and the resources to fulfill them. ACSI reasonably relied upon BellSouth's implicit representation at the time it signed the Interconnection Agreement.

It is apparent now that BellSouth either knew or should have known in July 1996 that it would not be able to meet these standards. BellSouth did not have the required processes in place at that time, and still has not developed those processes. It admits that at the time it negotiated the agreement, it knew that "it had not yet fully tested and refined the procedures to be used for ordering and providing [unbundled loops]." Answer ¶ 53. Nevertheless, in its apparent rush to create a paper record for an application for in-region interexchange authority pursuant to Section 271 of the Act, BellSouth apparently was more concerned with reaching an agreement than with fulfilling it. At no time did BellSouth inform ACSI that its commitments would be meaningless, nor did it disavow the implied representations that it could cutover customers within a five minute window and coordinate its processing of unbundled loop orders.

The Section 251(c)(1) obligation to negotiate in good faith requires "honesty in fact" in a carrier's dealings with a potential interconnecting carrier. *Interconnection Order* ¶ 148. This standard, which is based upon the intent of BellSouth, "is not susceptible to a standardized rule" and must be determined on a case-by-case basis. *Id.* ¶ 154. It "at a

minimum" includes instances of outright coercion, but also includes other activities which fail to meet the "honesty in fact" standard. BellSouth's concealment of its inability to meet the standards of the agreement, at the same time that it pledged to provide unbundled loops in accordance with them, constitutes dishonesty in fact and a breach of the duty to negotiate in good faith.

## **VI. RELIEF REQUESTED**

In the Complaint, ACSI specifically requested an award of all monetary damages stemming from BellSouth's breach of the Interconnection Agreement, the Act and the Commission's rules. However, pursuant to Section 1.722(b) of the rules, ACSI reserved its right to file a supplemental complaint specifying the calculation of its damages, after a finding of liability in this phase of the proceeding. Therefore, ACSI requests that the Commission make a finding that BellSouth is liable to ACSI and authorize ACSI to seek an award through a supplemental complaint of damages for lost profits, damage to goodwill, stranded investment, attorneys' fees, other expenses of litigation and all other damages caused by BellSouth's violations of law.

In addition, ACSI respectfully requests that the Commission order BellSouth immediately to take a number of actions required to comply with the provisioning standards of the Interconnection Agreement and the Commission's rules. Specifically, ACSI asks that the Commission order BellSouth to comply with the following:

1. BellSouth will provide Firm Order Confirmations ("FOC") within 4 hours from receipt of a complete Local Service Request ("LSR") from ACSI.
2. BellSouth will install unbundled loops within 72 hours of receipt of a valid LSR from ACSI.

3. BellSouth will convert at least 90 percent of unbundled loop orders within the 5 minute out-of-service time window established in Section IV.D of the Interconnection Agreement.
4. If SPNP is requested to be installed at the same time as the unbundled loop order, BellSouth will install SPNP simultaneously with installation of the unbundled loop.
5. BellSouth will notify ACSI of any service trouble within 20 minutes of its awareness of such trouble. Absent an emergency, BellSouth will provide advance notice to ACSI of any work being done on ACSI's lines.
6. BellSouth will provide monthly statistical reporting to ACSI on a city-by-city basis sufficient to enable ACSI to measure BellSouth's satisfaction of the foregoing performance criteria, both in absolute terms and in relation to the average install times for BellSouth's own end users (comparing unbundled loop installations to basic business line installations).
7. BellSouth will be required to pay liquidated damages in the amount of \$1,000 per access line contained in each delayed order, \$50,000 for each customer lost due to BellSouth's failure to meet the prescribed intervals, and \$75,000 for each month in which BellSouth does not meet 90% of its ACSI's installation intervals at parity with those for its own basic business end users.
8. BellSouth shall immediately provide ACSI with electronic access to all internal BellSouth pre-ordering, ordering, provisioning and maintenance-related operations support systems ("OSS").

In addition, ACSI requests that this docket be held open by the Commission for the period of one year, that BellSouth be required to file periodic reports with the Commission demonstrating its compliance with the conditions listed above, and that the Commission retain jurisdiction to take further action if required.

## CONCLUSION

For the foregoing reasons, the Commission should grant ACSI's Complaint, find BellSouth liable for damages for its actions, permit ACSI to file a supplemental complaint specifying damages, and granting the other relief described above.

Respectfully submitted,

AMERICAN COMMUNICATIONS  
SERVICES, INC.

Riley M. Murphy  
James C. Falvey  
AMERICAN COMMUNICATIONS  
SERVICES, INC.  
131 National Business Parkway  
Suite 100  
Annapolis Junction, MD 20701  
301-617-4200

DATED: May 23, 1997

By: 

Brad E. Mutschelknaus  
Steven A. Augustino  
KELLEY DRYE & WARREN LLP  
1200 Nineteenth Street, N.W.,  
Suite 500  
Washington, D.C. 20036  
202-955-9600

Its Attorneys

## DC01/AUGUS/42306.41

**CERTIFICATE OF SERVICE**

I hereby certify that I caused true and correct copies of the foregoing PUBLIC VERSION OF INITIAL BRIEF OF AMERICAN COMMUNICATIONS SERVICES, INC. to be delivered on this 30th day of May 1997, by either hand delivery or overnight courier service to the following parties:

John B. Muleta  
Chief, Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 6008  
Washington, D.C. 20554

Debra Sabourin  
Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 6114  
Washington, D.C. 20554

Kurt A. Schroeder, Chief  
Formal Complaints & Investigations Br.  
Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 6010  
Washington, D.C. 20554

William B. Barfield  
Jim O. Llewellyn  
BellSouth Telecommunications, Inc.  
1155 Peachtree Street, N.E.  
Suite 1800  
Atlanta, GA 30309-2641

Gerald Chakerian, Esq.  
Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 6310-C  
Washington, D.C. 20554

David G. Frolio  
BellSouth Telecommunications, Inc.  
1133 21st Street, N.W.  
Washington, D.C. 20036

R. Douglas Lackey  
Michael A. Tanner  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, N.E.  
Suite 4300  
Atlanta, GA 30375

L. Andrew Andrew Tollin  
Michael Deuel Sullivan  
Wilkinson, Barker, Knauer & Quinn  
1735 New York Avenue, N.W., Suite 600  
Washington, D.C. 20006-5289

  
Elisa Shavers

## APPENDIX

1. Third Declaration of Brenda Renner
2. Direct Testimony of William Stipe, III (Ga. PSC Docket No. 7212-U, April 9, 1997)
3. Rebuttal Testimony of William Stipe, III (Ga. PSC Docket No. 7212-U, April 30, 1997)
4. ACSI-BellSouth Interconnection Agreement (Excerpts)
5. Joint Statement of Stipulated and Disputed Facts and Legal Issues
6. BellSouth Responses and Objections to ACSI's First Set of Interrogatories
7. Exhibit withheld from public inspection due to claim of confidentiality
8. Letter from Paul J. Kingman, ACSI to Pinky Reichert, BellSouth, dated July 9, 1996 (*Kingman letter*). BellSouth Doc. No. 02471 et seq.
9. Exhibit withheld from public inspection due to claim of confidentiality
10. Exhibit withheld from public inspection due to claim of confidentiality
11. Exhibit withheld from public inspection due to claim of confidentiality
12. Exhibit withheld from public inspection due to claim of confidentiality
13. Exhibit withheld from public inspection due to claim of confidentiality
14. Exhibit withheld from public inspection due to claim of confidentiality
15. Exhibit withheld from public inspection due to claim of confidentiality
16. Direct Testimony of Nancy L. Murrah (Ga. PSC Docket No. 7212-U, April 9, 1997)

**EXHIBIT 1**



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
AMERICAN COMMUNICATIONS SERVICES, INC.)	)	
Complainant	)	
	)	File No. E-97-09
v.	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
Defendant	)	

**THIRD DECLARATION  
OF BRENDA RENNER**

I, Brenda Renner, declare under penalty of perjury that the following is true and correct:

1. I currently am employed by American Communications Services, Inc. ("ACSI") as Vice President of Network and Service Administration. I am making this Declaration in support of ACSI's Brief in the matter of American Communications Services, Inc. v. BellSouth Telecommunications, Inc., FCC File No. E-97-09. The purpose of this declaration is to summarize the facts (1) preceding ACSI's submission of unbundled loop orders to BellSouth Telecommunications, Inc. ("BellSouth"), and (2) the problems encountered in response to ACSI's orders submitted in Columbus, Georgia.